IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 24807 of 2007(C)

PETITIONER:

P.T.SREEJA, W/O.MOHANKUMAR,
'PRASANTHI', OZHINJAVALAPPU P.O.,
NEELESWARAM, KASARAGOD.

BY ADV. SRI.GEORGE JACOB (JOSE)
SMT.REENA ABRAHAM
SMT.RESHMI POULOSE

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE SECRETARY TO THE GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE KERALA PUBLIC SERVICE COMMISSION, PATTOM, THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF EDUCATION, KASARAGOD.

4. THE DISTRICT OFFICER, KERALA PUBLIC SERVICE COMMISSION, KASARAGOD.

BY GOVERNMENT PLEADER SRI. T.T. MOHAMMED
SRI.ALEXANDER JOSEPH,SC,KPSC, B/O

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P.(C)NO. 24807 OF 2007

DATED THIS THE 17th DAY OF SEPTEMBER, 2007

JUDGMENT

The petitioner is an aspirant for appointment as HSA in Physical Science in the Education Department pursuant to notification inviting applications by the Kerala Public Service Commission. Since the 3rd respondent herein did not report vacancies, some other persons in the rank list like the petitioner filed W.P.(c)No.37497/04 in which there was an interim order, Ext.P2, dated 24.12.2004 directing the 3rd respondent to report 26 vacancies of HSA (Physical Science) within five days from 24.12.2004. Subsequently by judgment dated 8.6.05 the said writ petition No.37497/04 along with W.P.(C)No.12470/05 were disposed of by Ext.P3 judgment directing the Kerala Public Service Commission to give advice memo to the eligible candidates against all the substantive vacancies reported by the 3rd respondent.

2. The petitioner has filed this writ petition seeking a

direction to the Kerala Public Service Commission to issue advice memos in accordance with Ext.P3 judgment.

3. Now it turns out that against Ext.P3 judgment, the Public Service Commission filed a review petition contending that since the vacancies were not reported before the expiry of the list, the P.S.C. cannot advise persons from the rank list which has expired. The review petitions (R.P.No.707/05 in W.P.(c)No.12470/05 and R.P.No.754/05 in W.P.(c) No.37497/04) were disposed of together by judgment dated 13.1.2006 recalling Ext.P3 judgment and directing posting of those writ petitions for re-hearing. Subsequently another learned Single Judge of this Court by judgment dated 25.7.07 disposed of those writ petitions with the following judgment.

> "Petitioners in these two writ petitions were included in the list of selected candidates for appointment to the post of HSA (Physical Science) in Kasaragod district. Admittedly, the list expired on December 30, 2004. It is the case of the petitioners that the department had failed to report several vacancies which had arisen during the period of validity of the list. More than two or three counter affidavits and reply affidavits have been field in these writ petitions. Ultimately, it boils down the question

as to whether the assertions made by the petitioners are correct or the stand taken by the department is tenable. Undoubtedly, the issues raised by the parties are in the realm of facts and facts alone. Necessarily, such issues have to be thrashed out on the basis of the records available in the office of the department concerned.

2. There is yet another aspect of the matter. It is the specific case of the petitioners that this court had issued an interim order on December 24, 2004 directing the department to report 26 vacancies to the Commission. It is asserted by the petitioners that the above order was received by the office of the Deputy Director of Education on December 28, 2004 as is revealed from Ext.P2 in writ petition NO.37397/04. However, the Deputy Director had not complied with the above direction. Resultantly, 26 vacancies as directed by this court could not be reported before the expiry of the list, viz. December 24, 2004. In fact, the Deputy Director reported 24 vacancies only on January 1, 2005. It is true that the department has consistently taken the stand that vacancies were not available to be reported. But learned counsel for the petitioners invites my attention to a judgment rendered by the Division Bench of this court in Writ Appeal No.595/1981 and submits that if in fact vacancies were available before the expiry of the list such vacancies ought to have been reported. The failure on the part of the department to report those vacancies should not be at the peril of

> the petitioners. Yet again, it has to be verified from the records as to whether vacancies were available at the time when the above direction was issued by this court. This again is a disputed question of fact.
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> 3. Having regard to the peculiar facts and circumstances of the case, writ petitions are disposed of with a direction to respondent no.1 to call for the records, scrutinize the same and pass appropriate orders in the matter in the light of the observations made above. This shall be done within four months from the date of receipt of a copy of this judgment. Petitioners or their authorized representative shall be afforded sufficient opportunity to be heard before any decision is taken in the matter. Petitioners shall produce copies of the two writ petitions, counter affidavits, reply affidavits etc. along with a certified copy of the judgment before respondent no.1 for compliance."

In view of the said judgment, the learned counsel for the petitioner confines relief to permit the petitioner also to file a representation for hearing the petitioner also while order are being passed pursuant to the judgment dated 25.7.07 in the said two writ petitions.

Having heard the learned counsel for the petitioner, the learned Government pleader and the learned standing counsel

appearing for the Public Service Commission, I dispose of this writ petition with a direction that the 1st respondent would hear the petitioner also in the matter before finally issuing orders pursuant to the above said judgment, if the petitioner files a representation seeking such an opportunity before the 1st respondent within two weeks from today, provided the 1st respondent has not already passed orders pursuant to the above said judgment.

S. SIRI JAGAN, JUDGE

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